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10/592,025	09/07/2006	Jeong-Min Lee	L69.12-0005	9391

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EXAMINER

QUEST, DENF JASON

ART UNIT

PAPER NUMBER

3728

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DELIVERY MODE

09/30/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/592,025

**Applicant(s)**

LEE ET AL.

**Examiner**

DENE QUEST

**Art Unit**

3728

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 7-12 and 19-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, and 13-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-85/86)
- Paper No(s)/Mail Date 07/25/2007.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species I, Figures 1-4, in the reply filed on 6/8/2009, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 7-12 and 19-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 06/08/2009.

### ***Priority***

3. Acknowledgment is made of applicant's claim for foreign priority based on nine applications filed in the Republic of Korea on February 19, 2004 and March 08, 2004. It is noted, however, that applicant has not filed a certified copy of Korea 10-2004-0016674 application as required by 35 U.S.C. 119(b).

### ***Specification***

4. The abstract of the disclosure is objected to because "when the spouting member is operation" Should be changed to --when the spouting member is in operation-- for clarification. Correction is required. See MPEP § 608.01(b).

5. The disclosure is objected to because of the following informalities: On page 2, Line 15-16, "when the spouting member is operation" Should be changed to --when the spouting member is in operation-- for clarification. On page 4, Line 6, "FIGS. 23 through 15" should be changed to --FIGS. 23 through 25--.

Appropriate correction is required.

### ***Claim Objections***

6. Claim 14 is objected to because of the following informalities: Claim 14 depends on claim 14. For the purpose of this examination the examiner presumes that claim 14 should depend on claim 13. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. In claim 1, on, Line 6, "when the spouting member is operation" Should be changed to --when the spouting member is in operation-- for clarification.

10. Claim 6 recites the limitation "the storage portion" in line 4. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claim 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Elliott (US Patent 6,003,728)

In re claims 1 and 5, with reference to figures 1, 2 and 4, Elliott discloses a cap (10) with a storage portion (24) with a storage space that is defined by the spouting member (26) and the storage portion, with a seal plate (60) formed on the lower end of the storage space, an outer cap (20) foldably formed on the storage portion and coupled to the spouting portion (34), where the spouting member inserted in the spouting portion, with an operational member (62) for breaking the seal plate, where the operational member is fixed on an inner surface of the storage portion via support arms (70) to move in a downward pivotal motion (Column 4, Line 35–Column 5, Line 65).

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-3 and 5, 6, 13, 14, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seelhofer (US 2004/0089165 A1) in view of Mollstam et al. (US Patent 6,098,795)

In re claim 1, with reference to figures 1-4, Seelhofer discloses a cap with a with a storage portion (1) and a storage space (14), having a seal plate (4) formed on a lower end of the storage space, an outer cap (3) foldably formed on the storage portion (1), and an operational member (9) that is formed on the spouting member (7) of the spouting portion (2), where the outer cap is coupled to the spouting portion via the shoulder (13) (Paragraph [0018]), but Seelhofer does not disclose a spouting member inserted in the spouting portion and that when the spouting member is operated the operational member breaks the seal plate.

However, with reference to figures 8 and 9, Mollstam et al. discloses a spouting portion (14) with a spouting member (46) that is inserted in the spouting portion, an operational member (40) that breaks a seal plate (28) when the spouting member is operated (Column 6, Line 25-62).

Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the cap of Seelhofer to have a spouting portion with a inserted spouting member and operational member as taught by Mollstam et al. in order to ensure that seal is broken and the two components are mixed when the spouting member is operated.

In re claim 2, with reference to figures 1 and 3, Seelhofer discloses a spouting portion (2) that is formed on a folding portion (5) with a folding line (6) (Paragraph [0018], Line 25-43).

In re claim 3, as discussed above, Seelhofer does not disclose the spouting member.

However, with reference to figures 8 and 9, Mollstam et al. discloses the spouting member (46) with an operational projection (16) that applies a force to the operational member (40) (Column 6, Line 25-62).

Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the spouting member of Seelhofer to have an operational projection that applies a force to an operational member as taught by Mollstam et al. in order to ensure that seal is broken by the operational projection applying force to the operational member so that the two components are mixed when the spouting member is operated.

In re claim 5, with reference to figures 1 and 3, Seelhofer discloses an operational member (7) that is fixed to the inner surface of the storage portion (14) by the material bridge (5) and moves in pivotal motion about the material bridge and point 6 through the upper side 8.

In re claim 6, as discussed above for claim 1, Seelhofer and Mollstam et al. disclose the claimed invention. The Examiner considers the space portion to be equivalent to the storage portion (1) as discussed above with Seelhofer.

In re claim 13, the claim contains the additional limitations of a main cap body and a spouting portion pivoted at a predetermined angle. Seelhofer, with reference to figures 1-4, shows a cap that has a main cap body (1) and a spouting portion that is pivoted at predetermined angles.

In re claim 14, with reference to figures 1, 3 and 4, Seelhofer discloses an operational member (7) on the spouting portion (2) that breaks the sealing plate (4) as it pivots (Paragraph [0018], Line 21-25).

In re claim 16, the claim contains the additional limitation of a spouting portion pivoted at a predetermined angle. Seelhofer, with reference to figures 1-4, shows a spouting portion that is pivoted at predetermined angles.

In re claim 18, with reference to figures 1, 3 and 4, Seelhofer discloses an operational projection (9) on the spouting portion (2) that breaks the sealing plate (4) (Paragraph [0018], Line 21-25).

15. Claims 4, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seelhofer (US 2004/0089165 A1) and Mollstam et al. (US Patent 6,098,795) as applied to claim 1 above, in view of Kubiliunas (US Patent 6,098,795).

In re claims 4, 15 and 17, Seelhofer does not disclose that the spouting member has an air introduction portion.

However, with reference to figure 2, Kubiliunas discloses a spouting member (4) that has an air introduction portion (38) (Column 2, Line37-50).



Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the spouting member of Seelhofer to have an air introduction portion as taught by Kubiliunas in order to enhance the fluid flow thru the spouting member by allowing the air to escape through the air introduction portion.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Atkins (US Patent 2,631,521), Pedersen (US Patent 2,824,010), Brina (US Patent 4,177,938), Hunt (US Patent 4,264,007), Morane et al. (US Patent 3,891,125), and Robbins (US Patent 5,114,011) disclose various caps that have a storage space to store a second material. Dark (US Patent 6,161,728) discloses a cap with a flipping spout that pierces the foil seal under the cap when the spout is flipped to open position. Lee (US 2003/0102318 A1) discloses a cap with a flipping spout that has an outer cap on the spout. Lipari (US Patent 3,220,588) and Dubach (US Patent 4,722,449) and Mollstam et al. (US Patent 6,105,760) and Daniels et al. (US 2004/0161504 A1) disclose containers that have caps containing operational members to break the seal between the cap and container sections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DENE QUEST whose telephone number is (571)270-5624. The examiner can normally be reached on Mon-Fri 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dene Quest/  
Examiner, Art Unit 3728

/Stephen Garbe/  
Primary Examiner, TC 3700